

Advice Summaries

March 2001

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance is also provided to persons whose duties under the Act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I."

Injunction Of Proposition 208 Remains In Place At Least Through The Year 2000

Following a three-week trial in October and November 1997, the Federal District Court for the Eastern District of California issued a preliminary injunction barring further enforcement of any portion of Proposition 208. (*California ProLife Council PAC et al. vs. Scully et al.*, 989 F.Supp. 1282 (E.D.Cal. 1998).) The injunction was issued on January 6, 1998. The Fair Political Practices Commission appealed the District Court's ruling to the Ninth Circuit Court of Appeals, which in January 1999, ordered the District Court to hold a second trial.

Shortly before trial began, the Legislature placed an initiative (Proposition 34) on the November 2000 ballot. Proposition 34 repealed most of the provisions of Proposition 208,

including all but two of the requirements at issue in the federal court challenge that led up to the 1998 injunction of Proposition 208. Recognizing this effect of Proposition 34, the federal court signed an order lifting the injunction of Proposition 208 effective January 1, 2001, the date on which Proposition 34 came into effect. As of the new year, twelve provisions of Proposition 208 became effective (principally, advertising disclosure requirements not challenged in the federal lawsuit and not repealed by Proposition 34). Two provisions of Proposition 208 which were not repealed by the new measure, but which were challenged in court (involving slate mail disclosure issues) remained under preliminary injunction. The trial court issued its final judgment on those two provisions on March 1, 2001, adjudicating the complaint of the slate mail plaintiffs and permanently enjoining Sections 84305.5 and 84503. On March 12, 2001, the Commission filed with the trial court a motion requesting that the court alter and amend its judgment to provide that the court's judgment did not apply to Section 84305.5 as it existed prior to Proposition 208, and to further provide that Section 84503 is unconstitutional only as applied to slate mailers.

On May 8, 2001, Judge Karlton issued an order specifying that the court had only ruled on the constitutionality of § 84305.5 insofar as it was amended by Proposition 208, and had only ruled § 84503 unconstitutional as applied to slate mailers.

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Campaign

Kayla J. Gillan
California Public Employees'
Retirement System
Dated March 27, 2001
Our File Number: I-01-018

Linda Terrazas
Friends of Conrado Terrazas
Dated March 27, 2001
Our File Number: I-01-023

David Bauer
Gun Owners of California
Dated March 30, 2001
Our File Number: A-01-042

This informal advice letter discusses the impact of various provisions of Proposition 34 on candidates for the CalPERS Board of Administration. Among the issues discussed is the applicability of campaign contribution limitations, voluntary expenditure limitations and use of campaign funds.

This informal advice letter discusses the applicable rules concerning a fund which sends contributions from its members to various candidates of the members' choosing. In some cases, the members use the fund's credit card account to charge their contributions and the fund then sends a contribution in that amount to the chosen candidate or campaign.

Existing committees may become small contributor committees if funds received in excess of \$200 per contributor are transferred to a new committee, and all other criteria for qualifying as a small contributor committee are met by the existing committee. An individual may contribute up to \$200 into the small contributor committee and make contributions to any associated general purpose committee. If a contribution in excess of \$200 is received from one source, the entire contribution should be placed into the account for the general purpose committee, after which up to \$200 may be transferred to the small contributor committee.

Conflicts of Interest

Paul J. Dostart
San Diego Workforce
Partnership
Dated March 20, 2001
Our File Number: A-00-022

J. Dennis Crabb
Town of Truckee
Dated March 30, 2001
Our File Number: A-00-066

Sukhi K. Sandhu
Baldwin Park Unified School
District
Dated March 13, 2001
Our File Number: I-00-179

Bill Rabenaldt
Pismo Beach City Council
Dated March 8, 2001
Our File Number: A-00-258

The members of the San Diego Workforce Partnership are public officials because the partnership is a local government agency under the analysis in *In re Siegel*. A corporation created by a partnership may be a local public agency.

This letter discusses the potential conflicts of interest facing a city council member in the context of council decisions regarding a new development project. The public official has an economic interest in a tenant of the new project as well as his own business.

A school board member whose employer had a contract with a school district could avoid a conflict of interest by abstaining from decisions related to that contract.

This letter discusses a newly elected city council member who is also a business owner, and the council's consideration of altering the use of a city parking lot near the council member's business. The letter reviews the recently amended conflicts regulations concerning materiality standards for effects on personal finances, business entities, persons who are sources of income and leasehold interests.

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Barbara Bailey
Madera Unified School District
Dated March 22, 2001
Our File Number: A-01-011

A member of a county commission would not violate the Act by accepting employment with the school district as a consultant. However, the author is cautioned that other bodies of law may restrict such employment.

Patrick Whitnell
City of Milpitas
Dated March 8, 2001
Our File Number: A-01-017

The letter analyzes conflicts of interest caused by a variety of economic interests of Milpitas council members and planning commissioners. It also discusses new conflict of interest rules for financial effects on business interests and real property in and near a midtown specific plan area, and the effect of a real estate license without being active in the real estate field.

Charles England
Cathedral City
Dated March 6, 2001
Our File Number: I-01-028

An employee of a paint store who is a city council member will have a conflict of interest in a development decision if it is reasonably foreseeable that the decision will increase or decrease the store owner's annual gross revenues by \$20,000.00, annual expenses by \$5,000.00 or its assets or liabilities by \$20,000.00

Diane M. Price
City of St. Helena
Dated March 9, 2001
Our File Number: A-01-030

A member of the city council owns property that is within 500 feet of the property that is the subject of a land use decision. The council member is presumed to have a conflict of interest in the decision under the Commission's materiality regulations.

Lori J. Barker
City of Chico
Dated March 2, 2001
Our File Number: A-01-031

A city council member with a conflict of interest in a portion of the Community Development Block Grant budget may not participate in the balance of budget decisions where issues are too interrelated to segregate them.

Deborah A. Flores, Ph.D.
Santa Barbara School Districts
Dated March 6, 2001
Our File Number: I-01-036

The Act does not prohibit a public official from making or participating in making any decision unless the official has an economic interest in that decision.

Michael Berest
Superior Court of California
County of Mariposa
Dated March 8, 2001
Our File Number: I-01-040

The Act does not bar a public official from contracting with his own agency. The Act prohibits an official from making, participating in making, and influencing a governmental decision which will foreseeably and materially financially affect the official, or an economic interest of the official. Influencing includes appearing before the official's own agency to influence it in a decision affecting the official's business.

Noreen Evans, Councilmember
City of Santa Rosa
Dated March 27, 2001
Our File Number: I-01-041

The economic interests of the council member are identified, and interest in leasehold interest is analyzed.

Chad A. Jacobs
City & County of San Francisco
Dated March 13, 2001
Our File Number: I-01-046

Pursuant to new Regulation 18707.9, a member of the Board of Supervisors may participate in a governmental decision despite a conflict of interest if either: (1) ten percent of the residential property units in the entire city are affected by the governmental decision, or (2) ten percent of the residential property units in the member's individual district are affected by the

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Michael D. Milich, City Attorney
City of Modesto
Dated March 20, 2001
Our File Number: A-01-052

decision. Please note that the requirements in Regulation 18707.9(b)(1)(2)(3) and (5) must also be satisfied in order for the exception to apply.

This is a follow-up to Advice Letter No. A-00-136 in light of changes in the law. Councilmember Smith may participate in this decision, unless he concludes that the decision will materially affect his sources of income. Whether Councilmember Fisher has a conflict of interest depends on the likely financial impact of the decision on the office building he owns, and on the building's tenants.

Gifts

Councilmember Julia Miller
City of Sunnyvale
Dated March 20, 2001
Our File Number: A-01-043

The use of a shared hotel room is a gift. If the fair market value of that gift is \$50 or more, it must be reported on the statement of economic interests. If valued at \$320 or more, it is a gift over the limit and must be reimbursed within 30 days of receipt.

Revolving Door

James P. Gazdecki
California Occupational Safety
and Health Appeals Board
Dated March 21, 2001
Our File Number: I-01-061

This is a general discussion of "revolving door" restrictions imposed on the former chairman of the California Occupational Safety and Health Appeals Board. The Chairman left more than a year prior to the letter.

SEI

Charisse L. Anderson
Metropolitan Transportation
Authority
Dated March 15, 2001
Our File Number: A-01-039

Filing officers may use electronic mail to notify and remind filers of their statement of economic interests' reporting obligations provided certain safeguards are in place.